

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

**ARELI VEGA REYNA, *et al.*,**

**Plaintiffs,**

**v.**

**RUSSELL HOTT, *et al.*,**

**Defendants.**

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**CASE NO. 1:17-CV-1192-LO-TCB**

**MEMORANDUM IN SUPPORT OF  
MOTION TO EXTEND RESPONSE DEADLINE**

Defendants Russell Hott, Thomas Homan, and Elaine Duke, by counsel and pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) and Local Rule 7, hereby move the Court to extend the deadline to respond to Plaintiffs' Motion for Class Certification (ECF No. 8) until fourteen days after the Court adjudicates the Motion to Dismiss that Defendants filed contemporaneously with this Motion.

Undersigned counsel certifies that at a telephonic conference on November 29, 2017, Plaintiffs, through counsel, objected to the relief sought in this Motion, but consented to an extension of time for Defendants to respond to Plaintiffs' Motion for Class Certification, from November 29, 2017, until and including December 20, 2017, provided Plaintiffs' time to reply is extended to January 10, 2017.

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 20, 2017, Plaintiffs Areli Vega Reyna, et al. (Plaintiffs) initiated this action by filing a Complaint, ECF No. 1, and an Emergency Motion For a Temporary Restraining Order. ECF No. 6. On October 27, the Court issued a Summons. ECF No. 3. On October 30, Plaintiffs

withdrew their motion for a temporary restraining order, ECF No. 7, and filed a Motion for Class Certification. On November 6, Plaintiffs filed an Amended Complaint. ECF No. 12.

Over the course of those events, Plaintiffs did not effect service on the United States Attorney for the Eastern District of Virginia. *See* Fed. R. Civ. P. 4(i)(1)(A). Rather, on November 15, Plaintiffs effected service pursuant to Rule 4 when they served the United States Attorney with their Complaint, Summons, and Motion for Class Certification. ECF No. 13. Defendants' deadline to respond to the Motion for Class Certification thus falls on November 29, 2017. E.D. Va. L.R. 7(F)(1).

Based on the fact that Plaintiffs served the Summons and Amended Complaint on November 15, Defendants' deadline to answer or otherwise respond to the Amended Complaint falls on January 16, 2018. Fed. R. Civ. P. 12(a)(2); *see* Fed. R. Civ. P. 6(a)(1)(C). Although Defendants' time to respond does not expire until mid-January, Defendants filed a Motion to Dismiss contemporaneously with this Motion. ECF No. 15.

### **ARGUMENT**

Defendants ask the Court to extend the deadline to respond to Plaintiffs' Motion for Class Certification until fourteen days after the Court resolves the pending Motion to Dismiss. Defendants seek such a stay not for purpose of delay, but rather to preserve their limited resources and advance the interest of judicial economy. Indeed, "[p]recertification rulings [on dispositive motions] . . . promote judicial efficiency and economy by limiting the 'use of the class action process for cases that are weak on the merits.'" *O'Bar v. Lowe's Home Ctrs., Inc.*, No. 5:04-CV-19, 2007 WL 1299180, at \*1 n.1 (W.D.N.C. May 2, 2007) (quoting Manual for Complex Litigation, Fourth, § 21.133).

Courts have stayed cases under circumstances that mirror the instant ones. *See, e.g., White v. RCS Recovery Servs. LLC*, No. 1:15-CV-140, 2015 WL 13404032, at \*2 (N.D. W. Va. Nov. 30, 2015) (staying case until court resolved dispositive motions, where “forcing the parties to litigate . . . would [have] impose[d] time and financial burdens not only on the parties but also on the Court’s judicial resources”); Order, *Abdul-Mateen v. Phipps*, No. 7:11-CV-51 (W.D. Va. June 8, 2011), ECF No. 35 (staying deadline to respond to plaintiff’s motion for summary judgment until court resolved defendant’s motion to dismiss). Furthermore, “[m]ost courts agree, and Rule 23(c)(1)(A) reflects, that . . . precertification rulings on threshold dispositive motions are proper, and one study found a substantial rate of precertification rulings on motions to dismiss or for summary judgment.” *O’Bar*, 2007 WL 1299180, at \*1 n.1.

Because an extension will preserve the parties and the Court’s limited resources more efficiently than the counter-proposed for delayed briefing proposed by Plaintiffs, good cause exists to extend the deadline to respond to Plaintiffs’ Motion for Class Certification until fourteen days after the Court resolves Defendants’ Motion to Dismiss. Fed. R. Civ. P. 6(b)(1)(A).

Dated: November 29, 2017

Respectfully submitted,

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/s/ Hans H. Chen

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2017, I will file the foregoing document with the Clerk of Court through the Court's ECF system, which will then send a notification of electronic filing to counsel for all parties.

Dated: November 29, 2017

/s/ Hans H. Chen

HANS H. CHEN

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